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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,059	10/14/2003	Jeffrey S. Brooks	BSS 6426.1	5710
321	7590	04/12/2005	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			COURSON, TANIA C	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 04/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/685,059

Applicant(s)

BROOKS, JEFFREY S. 

Examiner

Tania C. Courson

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-22 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11FEB05
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 4-8 and 10-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gould et al. (US 5,025,476) in view of Bliss (US 2,399,424).

Gould et al. disclose a system and method for measuring foot shapes including the following:

With respect to system claims 1 and 19:

- a) a platform (14) comprising a support surface (16) having an opening therein (Fig. 2), a fixture (20) positioned over the opening having a cavity (Fig. 2) suitable for receiving a foot to be measured (21) and an imaging device positioned relative to said opening to produce an image of a bottom surface of the foot (46) superimposed on foot measuring indicia (41), an actuator on the platform for operating the imaging device (column 6, lines 38-41).

With respect to method claims 11 and 15:

- a) placing the foot of a person (Fig. 2) into a fixture (20) positioned over a transparent window (16), scanning a bottom surface of the foot (46) through

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the window to produce an image of the foot (22) superimposed on foot measuring indicia (41), printing said image (column 12, lines 59-63) and using the image to select a properly sized pair of shoes (column 2, lines 32-37).

With respect to claims 2, 4-8, 10, 12-14, 16-18 and 20:

- a) wherein the fixture is shaped like a shoe (Fig. 2);
- b) wherein the support surface has a transparent window covering the opening (16);
- c) wherein the measuring indicia comprise markers imprinted on the window (41);
- d) wherein the imaging device is an optical scanner configured to produce the image by scanning the foot through the opening (46);
- e) wherein the image scanned image of the bottom surface of the foot and the foot measuring indicia (41);
- f) wherein said support surface comprises a raised platform above the imaging device (Fig. 2), and wherein said system further comprises an actuator on the raised platform for operating the imaging device (column 6, lines 38-41);
- g) wherein said imaging device is operable to print said image (column 12, lines 59-63).

Gould et al. do not disclose indicia visually indicative of a foot size, indicia comprising a scale indicating foot size, indicia being a scale marked to indicate foot size and said scale including numbers corresponding to different foot sizes.

Bliss teaches a means and method of fitting shoes that consists of indicia visually indicative of a foot size (Fig. 3, length size scales 34), indicia comprising a scale indicating foot size (Fig. 3, length size scales 34), indicia being a scale marked to indicate foot size (Fig. 3, length size scales 34), and said scale including numbers corresponding to different foot sizes (Fig. 3, length size scales 34 and page 2, column 4, lines 15-37). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the system and method for measuring foot shapes of Gould et al., so as to include indicia being a scale marked to indicate foot size, as taught by Bliss, so as to provide additional shoe fitting information to a user during use of the system and device.

3. Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gould et al. and Bliss in view of Wartell (US Des. 329,322) and Levine (US 4,064,641).

Gould et al. and Bliss disclose a system and method for measuring foot shapes, as stated above in paragraph 2.

Gould et al. and Bliss further disclose wherein the fixture fits snugly against the leg or ankle of the person whose foot is in the fixture to substantially prevent ambient light from entering the fixture (21 & 23).

Gould et al. and Bliss do not disclose wherein the fixture is a multicolored clown shoe and wherein the fixture comprises a cuff.

Wartell teaches a shoe fixture that consists of wherein the fixture is a multicolored clown shoe (Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the system and method for measuring foot shapes of Gould et al. and Bliss, so as to include a multicolored clown shoe, as taught by Wartell, so as to provide a greater amusement during use of the fixture.

Levine teaches a shoe fixture that consists of wherein the fixture comprises a cuff (42). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the system and method for measuring foot shapes of Gould et al. and Bliss, so as to include a cuff, as taught by Levine, so as to provide an increased secured fit during use of the fixture.

Response to Arguments

4. Applicant's arguments filed on January 4, 2005 have been considered but are moot in view of the new ground(s) of rejection. a

5. With regards to the argument the shield of Gould et al. is not "shaped like a shoe", the examiner utilizes the broadest definition of the indefinite claim language stating "shaped like a shoe" thus finds it proper to define the shield of Gould et al. as being "shaped like a shoe" since it does cover the foot.

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6. With regards to the argument the scanner of Gould et al. is not “used to produce the image”, the examiner utilizes the broadest definition of the indefinite claim language stating “an optical scanner configured to produce the image” thus finds it proper to define the optical scanner (46) of Gould et al. as being “configured to produce the image” since a camera does produce an image.

7. With regards to the argument that Gould et al does not show “an actuator on the raised platform”, the examiner utilizes the broadest interpretation of column 6, lines 38-41, which states that the “operator activates a switch or presses a button on a keyboard (not shown)” in that the button/keyboard would have to be near the system in order for the system to function, thus Figure 1 shows that the available space for the button/keyboard to be located would be “on” the system itself.

8. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art cited on PTO-892 and not mentioned above disclose a foot measuring device:

Short (US D280,300)

Bidegain et al. (US 4,395,826)

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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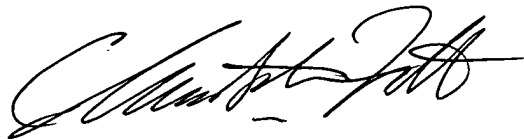
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (571) 272-2239.

The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (571) 272-2245.

The fax number for this Organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DIEGO F.F. GUTIERREZ
SUPERVISORY PATENT EXAMINER
GROUP ART UNIT 2859

TCC
April 8, 2005

CHRISTOPHER W. FULTON
PRIMARY EXAMINER